

ESTTA Tracking number: **ESTTA576485**Filing date: **12/13/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Six Fifteen Sixty Seven, LLC		
Entity	limited liability company	Citizenship	California
Address	820 Seward Street Los Angeles, CA 90038 UNITED STATES		

Attorney information	Robert A. Becker Fross Zelnick Lehrman & Zissu, P.C. 866 United Nations Plaza New York, NY 10017 UNITED STATES rbecker@frosszelnick.com Phone:212-813-5900
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Registration Subject to Cancellation

Registration No	3559085	Registration date	01/06/2009
Registrant	Waltemyer, Thomas 452 Northampton St. Easton, PA 18042 USX		

Goods/Services Subject to Cancellation

Class 041. First Use: 1993/05/01 First Use In Commerce: 1993/05/01
All goods and services in the class are cancelled, namely: Entertainment in the nature of live performances by a musical group

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	DESTRUCTO		
Goods/Services	live musical performances		

Attachments	F1361409.PDF(129438 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Robert Becker/
Name	Robert A. Becker
Date	12/13/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Registration No. 3,559,085

Petitioner's Reference: SFSS USA TC-13/12360

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Six Fifteen Sixty Seven, LLC,	:	
	:	
Petitioner,	:	
	:	
- against -	:	Cancellation No. _____
	:	
Thomas Waltemyer,	:	
	:	
Registrant.	:	
-----X		

PETITION FOR CANCELLATION

Petitioner, a limited liability company organized and existing under the laws of California, believes that it will be damaged by the continued registration of the mark shown in U.S. Reg. No. 3,559,085, and hereby petitions to cancel the same pursuant to Sections 14 and 2(d) of the Lanham Act.

As grounds therefor, petitioner alleges as follows:

1. Petitioner is the owner of all common law rights in the mark DESTRUCTO (“Petitioner’s Mark”) for live musical performances. Petitioner and its predecessor-in-interest have provided such services under Petitioner’s Mark in the U.S. since at least as early as June 1991.
2. Registrant is the owner of Reg. No. 3,559,085 for the mark EL-DESTRUCTO and Design (“Registrant’s Mark”) for “entertainment in the nature of live performances by a musical

group” in Class 41, which was registered on January 6, 2009, based on an application filed on April 19, 2006 and an alleged first use in commerce date of May 1, 1993.

3. On information and belief, Registrant did not use Registrant’s Mark for the services listed in Reg. No. 3,559,085 prior to May 1, 1993, the alleged first use in commerce date for Reg. No. 3,559,085.

4. Registrant’s Mark, as used with the covered services, is so similar to Petitioner’s Mark, as used for live musical performances, as to be likely to cause confusion, mistake, and deception. DESTRUCTO, which is Petitioner’s Mark, is the dominant portion of and is virtually identical in appearance, sound, and meaning to Registrant’s Mark. The services with which Registrant’s Mark is used are virtually identical to the services with which Petitioner uses Petitioner’s Mark.


5. Use of Registrant’s Mark is likely to cause confusion, mistake, and deception of the public in violation of 15 U.S.C. § 1052(d), in view of Petitioner’s prior rights in Petitioner’s Mark, by creating the mistaken belief that Registrant’s services and Petitioner’s services are one and the same, or that Registrant’s services are approved, endorsed, or sponsored by Petitioner, or that Petitioner is the source of Registrant’s services, or that the services of Registrant are in some other way associated or connected with Petitioner, all to Petitioner’s grave injury and harm.

WHEREFORE, Reg. No. 3,559,085 should be cancelled, and Petitioner therefore requests that that registration be cancelled.

Dated: New York, New York
December 13, 2013

Respectfully submitted,

FROSS ZELNICK LEHRMAN
& ZISSU, P.C.

By: 

Robert A. Becker
Richard Z. Lehv
Attorneys for Petitioner
866 United Nations Plaza
New York, New York 10017
(212) 813-5900

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the PETITION FOR CANCELLATION to be served by prepaid, first-class mail on this 13th day of December, 2013, upon Registrant, Thomas Waltemyer, 452 Northampton Street, Easton, PA 18042.

A handwritten signature in blue ink, appearing to read "Robert A. Becker", is written over a horizontal line.

Robert A. Becker